

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY
UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. 13/2022

Date of Institution 26.08.2021

Date of Order 13.05.2022

In the matter of:

1. Vishal Garg, 069, GF Woodstock, Nirvana Country, Sector 50, Gurgaon-122018.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s. JMD Limited, 3rd Floor, JMD Regent Square, Main M.G. Road, Gurugram, Haryana-122002.

Respondent

Quorum:-

1. Sh. Amand Shah, Technical Member & Chairman
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member



Present:-

1. None for the Applicant No 1.
2. None for Respondent
3. None for DGAP

ORDER

The present Report dated 26.08.2021 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation, under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 had filed an application under Rule 128 (1) of the CGST Rules, 2017 against the Respondent alleging profiteering in respect of construction service supplied by him. The Applicant No. 1 had stated that he had purchased a flat in the Respondent's project "**JMD IMPERIAL SUITES**" and had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the price on implementation of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.

2. The DGAP has stated that the aforesaid reference was examined by the Standing Committee on Anti-profiteering, the minutes of which were received by the DGAP on **03.06.2020**.

3. The DGAP has submitted that the Applicant No-1 along with the application had submitted the copy of Statement of Account Flat/Space No. 222 dated 06.06.2019, post-GST.

4. The DGAP has reported that the Applicant had booked a Flat/Space No. 222 in the Respondent's project "**JMD IMPERIAL SUITES**", for which Buyer's Agreement was executed on 08.04.2011, in the pre-GST period.

5. The DGAP has further stated that on receipt of the said reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the CGST Rules, 2017 was issued by the Director General of Anti-profiteering on 30.06.2020 calling upon the Respondent to reply as to whether he admit that the benefit of ITC had not been passed on to the recipients by way of commensurate reduction in price and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents. Further, the Respondent was given an opportunity to inspect the non-confidential evidences/information submitted by the Applicant No.1 during the period 08.07.2020 to 10.07.2020, which the Respondent did not avail.

6. The DGAP has further submitted that the Applicant No.-1 vide his letter dated 13.07.2020, received in the DGAP on 21.07.2020 submitted that *"we had mutually sorted out/ settled all the disputes vide Settlement Agreement dated 13.07.2020. We had nothing left pending on any account whatsoever including GST/VAT towards M/s JMD and fully satisfied with the aforesaid Settlement Agreement. We hereby withdrawal his above cited complaint and further confirm & declare that no amount was pending on any account whatsoever towards M/s JMD Limited including GST/VAT."* There had been no mention of as to how the subject issue had been sorted out and also as to how the benefit of ITC to be passed on had been worked

out and the quantum of benefit passed on to the above Applicant in the Applicant's withdrawal letter referred to above. However, on verification of the documents / information submitted by the Respondent from time to time, it had been observed that the Respondent had availed additional benefit of ITC under the GST regime, the benefit of the same had to be passed on to the recipients u/s 171 of CGST Act. The Standing Committee on Anti-profiteering in its 28th meeting held on 26.05.2020 have observed that " In the present meeting, a total of 38 complaints appear to have Pan India ramification or had been recommended by the State Screening Committees for further investigation. These were discussed by the Committee and found to have sufficient and necessary prima facie evidence of profiteering; hence, it was decided to forward these complaints to DG Anti-profiteering for further investigation." The above referred case was included in said 38 complaints considered by the Standing Committee in its 28th meeting held on 26.05.2020.

7. The DGAP has further reported that the Respondent vide his submissions dated 25.02.2021 submitted that "JMD Imperial Suites" was a sub project of the project "Suburbio-1" and vide his further submissions dated 25.06.2021 submitted that the project "Suburbio-67" was also known as "Suburbio-1" having total saleable area of 4,23,405 sq. ft. (approx) and the occupancy certificate for the entire project had been granted by Directorate of Town & Country Planning (DTCP), Haryana vide Memo No. ZP-347/SD(BS)/2018/29796 dated 18.10.2018.

8. The DGAP has also stated that the Respondent despite being requested to clarify as to the nature of agreements entered into with the

prospective buyers were wholly construction linked or payment linked or mixed, had not submitted any reply in this regard. Therefore, the period covered by the current investigation had been considered as proposed in the NOI i.e. from 01.07.2017 to 31.05.2020.

9. The DGAP has also submitted that the time limit to complete the investigation was up to 02.12.2020, as per Rule 129(6) of the CGST Rules, 2017. However, due to force majeure caused in the light of Covid-19 pandemic, the investigation could not be completed on or before the above date. In terms of the Notification No. 35/2020-Central Tax dated 03.04.2020 wherein "any time limit for completion or compliance of any action, by any authority or by any person, had been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action had not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of June, 2020". This was amended vide Notification No. 55/2020 dated 27.06.2020 and 91/2020-Central Tax dated 14.12.2020, issued by the Central Government under Section 168A of the Act wherein the last date for submission of report had been extended up to 31.03.2021. Further, Hon'ble Supreme Court of India passed an order dated 08.03.2021 in Suo Moto Writ Petition (Civil) No. 3 of 2020, wherein, it was stated that "in cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, was greater than 90 days, that

longer period shall apply". The above relief had been extended and the period from 14.03.2021 till further orders shall also stand excluded in computing the limitation period as per the Hon'ble Supreme Court's Order dated 27.04.2021 passed in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020 .

10. The DGAP has also reported that in response to the Notice dated 30.06.2020, the Respondent submitted his reply vide letters/emails dated 13.07.2020, 05.08.2020, 14.08.2020, 27.08.2020, 02.12.2020, 21.12.2020, 31.12.2020, 12.01.2021, 15.01.2021, 29.01.2021, 25.02.2021, 01.03.2021, 23.03.2021, 09.06.2021 and 25.06.2021.

11. The DGAP has stated that the vide the aforementioned letters/e-mails, the Respondent submitted the following documents/information:

- (a) Copies of GSTR-1 returns for the period July, 2017 to May, 2020.
- (b) Copies of GSTR-3B returns for the period July, 2017 to May, 2020.
- (c) Copy of GSTR-9 return for F.Y. 2017-18, 2018-19 & 2019-20.
- (d) Copy of Tran-1 for the period July, 2017 to December, 2017.
- (e) Copy of Electronic Credit Ledger for the period July, 2017 to May, 2020.
- (f) Copies of VAT & ST-3 returns for the period April, 2016 to June, 2017.
- (g) Copy of sale agreement/contract issued in the name of the Applicant.

- (h) CENVAT/Input Tax Credit register for the period April, 2016 to May, 2020.
- (i) Details of applicable tax rates, pre-GST and post-GST.
- (j) Copy of Balance Sheet for FY 2016-17, 2017-18 & 2018-19.
- (k) Details of VAT, ST, ITC of VAT, CENVAT Credit for the period April, 2016 to June, 2017 and output GST and ITC of VAT, CENVAT Credit for the period July, 2017 to May, 2020.
- (l) List of home buyers in the project "**SUBURBIO-67**(Suburbio-1)'.
- (m) Haryana VAT assessment order for the year 2016-17 issued by the Excise and Taxation Officer-cum-Assessing Authority, Gurugram East.
- (n) Project wise bifurcation of ITC of VAT for the period April, 2016 to June, 2017 wherein he had intimated that he had not claimed any ITC of VAT for the period April to June, 2017.
- (o) Status of the project "**SUBURBIO-67 (Suburbio-1)**" in terms of sold and unsold units.
- (p) Copy of Occupancy Certificate (Memo No. ZP-347/SD(BS)/2018/29796 dated 18.10.2018).
- (q) Copy of Conveyance Deed executed on 10.12.2012 between M/s. Ansal Properties & Infrastructure Ltd. and M/s. Anand Dham Realtors Pvt. Ltd. in favour of M/s. JMD Ltd.

12. The DGAP has stated that the Respondent vide his letters dated 09.06.2021 & 25.06.2021 submitted that the project "Suburbio-67" was also known as "Suburbio-1" having total saleable area of 4,23,405 sq.ft.

(approx) and total permissible FSI of 3,22,989 sq.ft. (approx.). Out of total permissible FSI of 3,22,989 sq.ft. (approx.), the Respondent had purchased FSI of 2,22,621 sq.ft. vide sale deed dated 10.12.2012 from Ansal Properties & Infrastructure Ltd. and Anandham Realtors Pvt. Ltd. and change of developer for the said FSI of 2,22,621 sq.ft. had already been obtained vide permission dated 27.02.2019. Further, remaining FSI of 1,00,368 sq.ft. was jointly purchased by the Respondent and Mr. Sushil Kumar Daima & Ors. from M/s. Spring Foundation vide conveyance deed dated 30.06.2014 for which application for change of developer was filed and was under process.

13. The DGAP has reported that the said FSI of 1,00,368 sq.ft. was jointly owned by the Respondent along with Mr. Sushil Kumar Daima & Ors. (mentioned as sandwood in the records of the Respondent) in the ratio 50:50 and thereafter they had mutually entered into a collaboration agreement for development of the said FSI into commercial building, wherein it was mutually agreed that both parties shall contribute their respective shares as 50% towards all expenses pertaining to the cost of construction and sale proceeds out of the same shall be shared as 50:50. The Respondent further submitted that no area had been booked / sold out of the aforesaid area.

14. The Respondent further submitted that the aforesaid combined FSI of 3,22,989 sq.ft. (approx.) was one project (Suburbio-67, otherwise also called as Suburbio-1) and that the Occupancy Certificate was granted for the entire project vide Memo No. ZP-347/SD(BS)/2018/29796 dated 18.10.2018 by the DTCP, Haryana. The Respondent vide his submission

dated 14.08.2020 submitted that the provisions of the RERA Act, 2016 were not applicable to the subject project "SUBURBIO-1" because he had filed the application for Occupancy Certificate before the applicability of RERA in real estate.

15. The DGAP has further stated that the Respondent vide his letter dated 29.01.2021 received by the DGAP on 03.02.2021 submitted that the information shared as per notice received from the office of Director General of Anti profiteering was highly confidential and requested not to share the same with anyone and accordingly the same had been treated as confidential in terms of Rule 130 of the CGST Rules, 2017.

16. The DGAP has further reported that the subject application and multiple replies submitted by the Respondent along with the documents have been carefully examined. The main issue for determination was whether there was reduction in rate of tax or additional benefit of ITC availed by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so, whether the Respondent passed on such benefit to the recipients, in terms of Section 171 of the CGST Act, 2017.



17. The DGAP has also stated that the other aspect to be considered, while determining profiteering was that para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) reads as "*Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*".

Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017

reads as“(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration had been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever was earlier”. Thus, the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remain unsold at the time of issue of the Completion Certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:-

Section 17 (2) “Where the goods or services or both was used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies”.

Section 17 (3) “The value of exempt supply under sub-section (2) shall be such as might be prescribed and shall include supplies on which the recipient was liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building”.

18. The DGAP has also submitted that the in response to the Notice of Initiation of investigation dated 30.06.2020 and subsequent reminders, the

Respondent vide his submission dated 09.06.2021 provided the details of turnover and CENVAT credit /ITC availed *for all the projects as mandated under erstwhile CENVAT Credit Rules 2004, present CGST Rules 2017 & RERA regulations*. The Respondent vide his submission dated 14.08.2020 further submitted that the provisions of the RERA Act, 2016 were not applicable to the subject project "SUBURBIO-67 (Suburbio-1)" because they had filed the application for Occupancy Certificate before the applicability of RERA in real estate.

19. The DGAP reported that from the above, it was clear that the credit on input services was admissible to the Respondent under Rule 2(1) of the Cenvat Credit Rules 2004, which was utilized to pay service tax. Further, the Respondent vide letter dated 15.01.2021 submitted that as per the Assessment Order No. 886/2016-17 dated 27.02.2020, he was eligible for credit of ₹7,91,900/- for the FY 2016-17 and out of that **₹3,66,212/-** was with reference to the project "SUBURBIO-67 (Suburbio-1)". Further, as seen from the Respondent's letter dated 29.01.2021 wherein it was communicated that he **had not taken VAT input for the period April, 2017 to June, 2017**. Accordingly, **ITC of VAT of ₹3,66,212/-** for the period 01.04.2016 to 30.06.2017 had been considered for computation of profitability.



20. The DGAP reported that the Respondent vide letter dated 25.06.2021 submitted that he had made reversal of ITC against the unsold super area of 1,62,426.39 sq.ft. that was under the exclusive ownership of the Respondent and 1,11,758.61 sq.ft. under the joint ownership with Mr.

Sushil Kumar Daima & Ors (mentioned as sandwood in the records of the Respondent) in respect of the units that were unsold.

21. The DGAP has stated that it was observed that prior to 01.07.2017, i.e., before GST was introduced, the Respondent was eligible to avail CENVAT credit of Service Tax paid on the input services. However, CENVAT credit of Central Excise duty paid on the inputs was not admissible as per the CENVAT Credit Rules, 2004, which was in force at the material time. Moreover, in the pre-GST regime as seen from the VAT returns it was observed that he had awarded the work to various sub-contractors and had also purchased certain materials on which credit of VAT was claimed. However, as seen from the Order No. 886/2016-17 dated 27.02.2020 issued Under Haryana Value Added Tax, 2003 by the Excise and Taxation Officer-cum-Assessing Authority, Gurugram submitted vide Respondent's letter dated 15.01.2021, it was observed that the Input Tax allowed proportionate to the sold area was ₹7,91,900/- and also as seen from the reconciliation of Purchase and VAT for the Financial year 2016-17 the credit attributable to the project "SUBURBIO-67 (Suburbio-1)" **was ₹3,66,212/-**. Further, as seen from the Respondent's letter dated 29.01.2021 wherein it was communicated that he had not taken VAT input for the period April, 2017 to June, 2017. Accordingly, the credit of VAT for the period April, 2016 to June, 2017 was considered as ₹3,66,212/- for the purpose of computation of the element of profiteering. Further, post-GST, the Respondent could avail the ITC of GST paid on all the inputs and input services. From the information submitted by the Respondent for the period April, 2016 to May, 2020, the details of the ITC availed by them, his turnover from the project "SUBURBIO-67 (Suburbio-1)" and the ratios of ITC to the turnover, during the pre-GST (April, 2016 to June, 2017) and

post-GST (July, 2017 to May, 2020) periods was calculated and was furnished in Table-'A' below:

Table-A			
S. N.	Particulars	Total (Pre-GST)(April, 2016- June, 2017)	Total (Post-GST)(July, 2017- May, 2020)
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	47,33,809	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	3,66,212	-
3	Input Tax Credit of GST Availed (C)	-	2,08,24,629
4	Total CENVAT/Input Tax Credit Available (D)	51,00,021	2,08,24,629
5	Turnover for Flats as per Home Buyers List (E)	3,23,85,292	4,49,16,642
6	Total Saleable Area (in SQF) (F)	4,23,405	4,23,405
7	Total Sold Area (in SQF) relevant to turnover (G)	87,782	90,333
8	Relevant ITC [(H)= (D or C)*(G)/(F)]	10,57,357	44,42,912
9	Ratio of ITC Post-GST [(I)=(H)/(E)*100]	3.26%	9.89%

*The calculation above, was based on the home-buyers demand data submitted by the Respondent vide his letter dated 09.06.2021. The OC of the project was issued on **18.10.2018** as such the Respondent had not filed the option to be filled under form four under Notification No. 3/2019, effective from 01/04/2019 for ongoing project.

** The credit of Service Tax paid on the input services received for the period April, 2016 to June, 2017 amounting to ₹1,34,920/- had not been taken into consideration for computing the profiteering in as much as no unit in the jointly owned property (sandwood) was sold and hence does not attract GST.

22. The DGAP submitted that from the above Table-‘A’, it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 3.26% and during the post-GST period (July, 2017 to May, 2020), it was 9.89%. This clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 6.63% [9.89% (-) 3.26%] of the turnover for the project “SUBURBIO-67 (Suburbio-1)”.

23. The DGAP has reported that it was also observed that the Central Government, on the recommendation of the GST Council, had levied 18% GST on construction service (after one third abatement towards value of land, effective GST rate was 12% on the gross value), vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

24. As per the DGAP on the basis of the figures contained in Table- ‘A’ above, the comparative figures of ITC availed/available as a percentage of the turnover in the pre-GST and post-GST periods and the recalibrated basic price as well as the excess collection (profiteering) during the post-GST period, has been tabulated in Table- ‘B’ below:

Table-B			
S. N.	Particulars		Post-GST
1	Period	A	July, 2017 to May, 2020
2	Output GST rate (%)	B	12%
3	Ratio of CENVAT credit to Total Turnover in pre GST period as per Table - 'A' above (%)	C	3.26%
4	Ratio of ITC to Total Turnover in post GST period as per Table - 'A' above (%)	D	9.89%
5	Increase in ITC availed post-GST (%)	E= D-C	6.63%

6	Analysis of Increase in input tax credit:		
7	Base Price raised during July, 2017 to May, 2020 (Rs.)	F	4,49,16,642
8	GST raised over Base Price (Rs.)	$G = F * B$	53,89,997
9	Total Demand raised	$H = F + G$	5,03,06,639
10	Recalibrated Base Price	$I = F * (1 - E)$ or 93.37% of F	4,19,38,669
11	GST @12%	$J = I * B$	50,32,640
12	Commensurate demand price	$K = I + J$	4,69,71,309
13	Excess Collection of Demand or Profiteering Amount (in Rs.)	$L = H - K$	33,35,330

25. As per the DGAP from Table- 'B' above, it was clear that the additional ITC of 6.63% of the turnover should have resulted in commensurate reduction in the basic prices as well as cum-tax prices for the home-buyers of the project "SUBURBIO-67 (Suburbio-1)". Therefore, in terms of Section 171 of the CGST Act, 2017, the Respondent had not reduced the basic prices for the buyers of this project commensurate to the additional benefit accrued and this benefit of the additional ITC was required to be passed on by the Respondent to the recipients. In other words, by not reducing the pre-GST basic prices on account of additional benefit of ITC and charging GST @12% on the pre-GST basic prices, the Respondent appears to have contravened the provisions of Section 171 of the CGST Act, 2017.

26. The DGAP submitted that having established the fact of profiteering, the next step was to quantify the same. On the basis of the aforesaid CENVAT/input tax credit availability in the pre and post-GST periods and the demands raised by the Respondent on the Applicant No.1 and other home buyers towards the value of construction on which GST liability @ 12% was discharged by the Respondent during the period 01.07.2017 to 31.05.2020, the amount of benefit of ITC not passed on to the recipients or

in other words, the profiteered amount comes to ₹33,35,330/- which included GST. The buyers (of flats sold upto the receipt of the date of Occupancy Certificate and payment made thereon upto 31.05.2020) and unit no. wise break-up of this amount has been given in Annex-22 for Project "SUBURBIO-67 (Suburbio-1)".

27. The DGAP has claimed that The Respondent did not claim to have passed on the benefit of ITC to any of the home buyers, which was corroborated from the home buyers list submitted by the Respondent. Hence it was treated as 'NIL' in respect of the Project.

28. The DGAP has also submitted that above computation of profiteering was with respect to 150 home buyers amongst all the customers as on 31.05.2020 in the project "Suburbio-67(Suburbio-1)" in whose case demands had been raised post-GST. As seen from the submissions made by the Respondent, it was observed that the Project "Suburbio-67(Suburbio-1)" comprised of 694 units in all (Total 254 sold, 440 unsold). Out of which 519 units were under exclusive ownership of the Respondent and the balance units 175 units were under the joint ownership with Mr. Sushil Kumar Daima & Ors. Out of the 694 units in the project, 252 units were sold prior to receipt of OC and 2 units were sold after receipt of OC. Out of the 175 units under the joint ownership, 88 units belonged to Mr. Sushil Kumar Daima & Ors. Further, as per the submissions of the Respondent, it was seen that no unit under the joint ownership was sold.

29. The DGAP concluded that from the above discussion, it appeared that post-GST, the benefit of additional ITC to the tune of 6.63% of the turnover, has accrued to the Respondent and the same was required to be

passed on by the Respondent to Applicant No.1 and the other eligible recipients. Section 171 of the CGST Act, 2017 appeared to have been contravened by the Respondent, in as much as the benefit of additional ITC on the demand raised by the Respondent during the post-GST period from 01.07.2017 to 31.05.2020, had not been commensurately passed on to the Applicant No.1 and the other recipients. On this account, the Respondent had been found to have profiteered an amount of ₹33,35,330/- (Thirty Three Lakhs Thirty Five Thousand Three Hundred Thirty only) which included 12% GST over the basic price. The above said computation of profiteering was in respect of 150 home buyers. All the home buyers were identifiable as the Respondent had provided their names and addresses along with unit nos. allotted to them. As seen from the statement of account dated 06.06.2019 (Annex-23) submitted by the Applicant No.1 in respect of the flat/space no. 222 in the Respondent's project it was seen that the GST on current demand (05% of Sale Consideration (BSP) amounting to Rs. 25,800/- was due to be paid to the Respondent i.e. there was a demand of Rs. 2,15,000/- post GST whereas as per the homebuyers list no demand/advance was raised and received by the Respondent. Therefore, profiteering amount in respect of the Applicant Shri Vishal Garg was 'NIL' since there were no demand raised in respect of him post-GST as per the home-buyers list.



30. The DGAP submitted that the present investigation covers the period from 01.07.2017 to 31.05.2020.

31. In view of the aforementioned findings, it appeared to the DGAP that the provisions of Section 171(1) of the CGST Act, 2017, requiring that "any reduction in rate of tax on any supply of goods or services or the benefit of

ITC shall be passed on to the recipient by way of commensurate reduction in prices”, had been contravened by the Respondent in the present case.

32. The above Report of the DGAP was considered by this Authority in its sitting held on 23.02.2022 and it was decided to direct the Respondent and the Applicant No. 1 to file their consolidated written submissions in respect of the report of the DGAP by 15.03.2022. However, the Applicant No. 1 did not file his written submissions. The Respondent has filed his written submissions dated 05.04.2022, vide which he has stated:-

i. That Vishal Garg Applicant No.1 and Mrs. Payal Garg had withdrawn their Complaint vide letter dated 13.07.2020 filed against the Respondent.

ii. That facts mentioned in Point No. 21 i.e Ratio of Input Tax Credit Pre- GST (April 2016 to June 2017) 3.26% and Ratio of Input Tax Credit Post GST (July 2017-May 2020) 9.89% and Point 24 i.e. Excess Collection of Demand or Profiteering Post GST July 2017-May 2020) Rs. 33,53,330/- were not true and fair as per records submitted by the Respondent before the DGAP.

iii. That facts as mentioned in Point No. 25 of the Report (F.No. 22011/API/48/2020/1590) dated 26th August 2021 i.e the Input Tax Credit of 6.63 of the turnover should have resulted in commensurate reduction in the basic price as well cum-tax price for the home buyers of the project “SUBURBIO-67(Suburbio-1) were not correct. Hence, prima facie there was no case for any GST profiteering of an amount of Rs. 33,53,330/-.

33. Copy of the above submissions dated 05.04.2022 of the Respondent was supplied to the Applicant No. 1 to file his

rejoinder if any. However, the Applicant No. 1 had not submitted any written submissions in respect of the above submissions of the Respondent. Supplementary report was sought from the DGAP on the above submissions of the Respondent under Rule 133(2A) of the CGST Rules, 2017. The DGAP has filed his supplementary report dated 29.04.2022 and stated:-

a) That the Applicant No.1 vide his letter dated 13.07.2020, received in the office on 21.07.2020 submitted that *“we had mutually sorted out/ settled all the disputes vide Settlement Agreement dated 13.07.2020. We had nothing left pending on any account whatsoever including GST/VAT towards M/s JMD and fully satisfied with the aforesaid Settlement Agreement. We hereby withdrawal his above cited complaint and further confirm & declare that no amount was pending on any account whatsoever towards M/s JMD Limited including GST/VAT.”* However, there had been no mention of as to how the subject issue had been sorted out and also as to how the benefit of ITC to be passed on had been worked out and the quantum of benefit passed on to the above Applicant in the applicant's withdrawal letter referred to above. The Standing  Committee on Anti-profiteering in its 28th meeting held on 26.05.2020 had observed that *“ In the present meeting, a total of 38 complaints appear to had Pan India ramification or had been recommended by the State Screening Committees for further investigation. These were discussed by the Committee and found to have sufficient and necessary prima facie evidence of profiteering; hence, it was decided to forward these complaints to DG Anti-profiteering for further investigation.”* The said 38 complaints included the complaint in

respect of Respondent also. Further, on verification of the documents / information submitted by the Respondent from time to time, it had been observed that the Respondent had availed additional benefit of ITC under the GST regime, the benefit of the same had to be passed on to the recipients u/s 171 of CGST Act. Accordingly, notwithstanding the withdrawal of complaint by the above Applicant, the investigation has been carried out in the best interest of upholding the letter and spirit of the provisions of Section 171 of the CGST Act, 2017.

- b) that the Cenvat Credit of Service Tax paid on input Services from 01.04.2016 to 30.06.2017 and Input Tax Credit under GST for the period 01.07.2017 to 31.05.2020 in respect of the subject project i.e. SUBURBIO -67 (SUBURBIO-I) had been considered from the project wise bifurcation of turnover and CENVAT credit/ITC availed for all the projects as submitted by the Respondent vide Annexure –I appended to letter dated 09.06.2021. Further, Input Tax Credit of VAT for the period 01.04.2016 to 30.06.2017 had been considered as Rs. 3,66,212/- based on the Order No. 886/2016-17 dated 27.02.2020 issued under Haryana Value added Tax, 2003 by the Excise and Taxation Officer-cum-Assessing Authority, Gurugram along with Input Credit projectwise submitted by the Respondent vide Annexures -6 appended to the letter dated 15.01.2021. The DGAP has also claimed that the turnover for the period 01.04.2016 to 30.06.2017 in the pre-GST era and for the period 01.07.2017 to 31.05.2020 in the post-GST era has been taken from the home buyers list submitted by the Respondent vide Annexure-3 appended to the letter dated 09.06.2021. Further, the DGAP stated that the ratio and the

profiteered amount had been computed following the standard practices/procedure upheld by the NAA in similar cases.

34. The above supplementary report of the DGAP was supplied to the Respondent to file his consolidated written submissions, if any. Meanwhile the Respondent vide his submissions dated 25.04.2022 has stated that he had already submitted a detailed reply vide his earlier submissions dated 05.04.2022 and he had nothing more to add.
35. The matter was taken up for proceedings vide Order dated 19.04.2022 and hearing in the matter through Video Conferencing was scheduled to be held on 06.05.2022. However, the Respondent vide his letter dated 25.04.2022 declined to attend any hearing claiming that he had already made his submissions and had nothing to add.
36. We have carefully considered the Reports filed by the DGAP, *oil* all the submissions and the documents placed on record, and the arguments advanced by the Respondent and find that the ITC, as a percentage of the turnover, that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 3.26%, whereas, during the post-GST period (July-2017 to May, 2020), it was 9.89%. This confirms that in the post-GST period, the Respondent has benefitted from the additional ITC and the same is required to be passed on by him to the eligible flat buyers. We observe that the computation of the amount of ITC benefit to be passed on by the Respondent to the eligible flat buyers works out to Rs. 33,35,330/- (Thirty Three Lakhs Thirty Five Thousand Three Hundred and Thirty) which includes 12% GST with respect to 150 homebuyers amongst all the customers as on 31.05.2020 in the Project "Suburbio 67(Suburbio-1) in whose case demands had been raised post-GST.

37. The Respondent has filed his first written submissions on 05.04.2022 vide which he had submitted that Vishal Garg Applicant No.1 and Mrs. Payal Garg had withdrawn their Complaint vide letter dated 13.07.2020 addressed to the DGAP. In this regard it is to mention that the Applicant No.1 vide his letter dated 13.07.2020, received by the DGAP on 21.07.2020 submitted that *“we had mutually sorted out/ settled all the disputes vide Settlement Agreement dated 13.07.2020. We had nothing left pending on any account whatsoever including GST/VAT towards M/s JMD and fully satisfied with the aforesaid Settlement Agreement. We hereby withdrawal his above cited complaint and further confirm & declare that no amount was pending on any account whatsoever towards M/s JMD Limited including GST/VAT.”* In this regard, the Authority finds that there is no provision envisaged under the CGST Act, 2017 or the Rules there under to drop verification/Investigation of profiteering once the Complainant/Applicant withdraws his complaint. The same analogy was being followed by the DGAP in all the cases and accordingly the investigation was continued once the recommendations of the State Screening Committee and Standing Committee were received. The Authority finds that the quantum of benefit passed on to the Applicant is not mentioned in the Applicant's withdrawal letter. The Standing Committee had forwarded this case with the comments *“found to have sufficient and necessary prima facie evidence of profiteering”*. Hence, despite the withdrawal of complaint by the Applicant, the investigation was carried out by the DGAP in the best interest of upholding the letter and spirit of the provisions of Section 171

of the CGST Act, 2017. Therefore, the contention of the Respondent to drop verification/investigation of profiteering after the withdrawal of Application by the Applicant No. 1 is not tenable.

38. The Respondent vide above submissions has also mentioned that in Point No. 21 i.e Ratio of Input Tax Credit Pre- GST (April 2016 to June 2017) 3.26% and Ratio of Input Tax Credit Post GST (July 2017-May 2020) 9.89% and Point 24 i.e. Excess Collection of Demand or Profiteering Post GST July 2017-May 2020) Rs. 33,53,330/- is not true and fair as per records submitted by the Respondent before the DGAP. The Respondent has further contended that the facts as mentioned in Point No. 25 of the Report (F.No. 22011/API/48/2020/1590) dated 26th August 2021 i.e the Input Tax Credit of 6.63 of the turn over should have resulted in commensurate reduction in the basic prices as well cum-tax price for the home buyers of the project "SUBURBIO-67(Suburbio-1) was not correct. The Respondent has contended that, there was no case for any GST profiteering of an amount of Rs. 33,53,330/-. The Authority finds that the Cenvat Credit of Service Tax paid on Input Services from 01.04.2016 to 30.06.2017 and Input Tax Credit under GST for the period 01.07.2017 to 31.05.2020 in respect of the subject project i.e. SUBURBIO -67 (SUBURBIO-I) had been considered from the project wise bifurcation of turnover and CENVAT credit/ITC availed for all the projects as submitted by the Respondent. The Input Tax Credit of VAT for the period 01.04.2016 to 30.06.2017 had been considered as Rs. 3,66,212/- based on the Order No. 886/2016-17 dated 27.02.2020 issued under Haryana Value added Tax, 2003 by the Excise and Taxation Officer-cum-Assessing Authority, Gurugram along with Input Credit project wise submitted by the Respondent vide the letter dated 15.01.2021. Further, the turnover for the period 01.04.2016 to 30.06.2017 in the pre-GST era and for the period 01.07.2017 to 31.05.2020 in the post-GST era has been taken from the home buyers list submitted by the Respondent vide the letter dated 09.06.2021. Therefore, the calculation of the amount of ITC benefit to be passed on to all the eligible flat buyers of Rs.

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33,35,330/- was on the basis of the information supplied by the Respondent and hence the amount of profiteering computed by the DGAP is hereby accepted as correct.

39. It is clear from the plain reading of Section 171(1) that it deals with two situations :- one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period. Hence, the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. On this issue it has been revealed from the DGAP's Report that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 3.26% and during the post-GST period (July-2017 to May-2020), it was 9.89%. This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 6.63% (9.89%-0.3.26%) of his turnover and the same was required to be passed on to all eligible flat buyers. The DGAP has calculated the amount of ITC benefit to be passed on to all the eligible flat buyers as Rs. 33,35,330/- on the basis of the information supplied by the Respondent and hence the amount of profiteering computed by the DGAP is hereby accepted as correct.

40. In view of the discussions para 39 above, it is clear that the Respondent has profited an amount of Rs. 33,35,330/- during the period of investigation i.e. 01.07.2017 to 31.05.2020. The above amount of Rs. 33,35,330/- (including 12% GST) that has been profited by the Respondent from his home buyers, shall be refunded by him, along with interest @18% thereon, from the date when the above amount was profited by him till the date of such payment, in accordance with the provisions of Rule 133 (3) (b) of the CGST Rules 2017. We also make it clear that the

Applicant No.1 is not entitled to any benefit since he has not paid any instalment in the post GST period and hence also not borne the burden of payment of GST.

41. We find no reason to differ from the above-detailed computation of profiteering and hence the profited amount for the period from 01.07.2017 to 31.05.2020, in the instant case, is determined as Rs. 33,35,330/- This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realised from the flat/unit buyers in a manner that is commensurate with the benefit of ITC received by him as has been detailed above.

42. The Respondent is also liable to pay interest as applicable on the entire amount profited, i.e. Rs. 33,35,330/-. Hence the Respondent is directed to also pass on interest @18% to the customers/ flat buyers/ recipients on the entire amount profited, starting from the date from which the above amount was profited till the date of passing on/ payment, as per provisions of Rule 133 (3) (b) of the CGST Rules 2017. 

43. The complete list of homebuyers with the details of amount of benefit of ITC to be passed along with interest @ 18% is furnished in the below Table:-

S. No.	Name of Flat Owner	Profiteering Amount (in Rs.)
1	Meenu Gosain & Reena Puri Lekhi	21,063
2	Chhaya Mohan	7,873
3	Kapil Maini	9,439
4	Charu Maini	8,885
5	Ashok Kumar Malik & Sushma Malik	17,349
6	Parkash Vanjani & jaya Vanjani	6,630
7	Mohit Kumar Gupta & Monica Gupta	13,744
8	Anuj Yadav	15,517
9	Gurdeep Singh Arora	21,085
10	Karishma Finishers Pvt. Ltd.	35,071
11	Anshu Mahajan	17,748
12	Ramesh Chand Juneja & Aruna Juneja	16,954
13	Sudhir Gupta	36,456
14	Rakesh Arora & Seema Arora	21,062
15	Vivek Tyagi	20,387
16	Prem Lata Dhir	18,749
17	Aditya Karwa	21,063
18	Jagriti Exim Pvt Ltd	2,296
19	Jagriti Exim Pvt Ltd	3,302
20	Jagriti Exim Pvt Ltd	3,690
21	Jagriti Exim Pvt Ltd	4,612

22	Jagriti Exim Pvt Ltd	22,017
23	Dalip Singh	2,14,083
24	Kapil Malik & Ritu Malik	17,457
25	Vikramjeet Singh Dhillon & Ramneek Singh Kochar	20,024
26	Paramjeet Singh Marwah & Manik Gulati	20,966
27	Security Investment Limited	30,040
28	Vinod Kaushal	19,320
29	Capt. Lila Singh Aulakh	12,670
30	Avdesh Chahar & Karan singh Dahiya	52,412
31	Dipti Yadav	2,05,618
32	Hemant Kumar & Surya Kant	20,953
33	Netar Pal	17,573
34	Anil Raghav	18,216
35	Lt. Col. A.S. Sohal	13,042
36	Kiran Bala	1,95,051
37	Sudhanshu Maggon	6,630
38	Navneet Kaur Khanuja	28,914
39	Dinesh Bajaj	22,490
40	Mohan Lal Bajaj	23,225
41	Satish Tanwar	21,876
42	Satish Kumar Gupta	17,558
43	Satish tanwar	20,953
44	Sukhdev Singh More & Preshna More	1,06,863
45	Savita Gupta, Shaurya Gupta & Sanjay Gupta	26,183
46	Savita Gupta, Shaurya	25,954

	Gupta & Sanjay Gupta	
47	Onkar Nath Nagi & Mrs. Birinder Kaur Nagi	26,656
48	Anu Yadav	9,074
49	Naresh Kumar Yadav	28,172
50	Dr. Ashish Rustogi	13,502
51	Parveen Dang	16,883
52	Shashi Saxena & Satish Kumar Saxena	19,356
53	Ramesh Chand Juneja	8,715
54	Rajeev Arora & Shikha Arora	14,030
55	Pawan Gupta & Alpna Gupta	25,932
56	Kulwant Singh & Raman Preet Kaur	21,870
57	Chandervati	5,454
58	Punam Malhotra & Prachi Malhotra	23,624
59	Shweta Arora	16,272
60	Manisha Anand	17,917
61	Suman Yadav	29,808
62	Ankush Arora	32,290
63	Dasraj	20,420
64	Akanksha Buildwell Pvt. Ltd.	24,669
65	Shashi Bhan/ Shyam Singh Boken	17,140
66	Rakesh Mittal/ Nimmi Mittal	7,086
67	Ganesh Mathur & Yamini Mathur	4,895
68	Janesh Khanna & KanwalDeep Singh	9,616

69	Sanjeev Vats	19,333
70	Neena Bansal & Mrs. Rucika Arora Bansal	12,054
71	Sedhu Ram & Sons (HUF)	1,06,321
72	Shilpi Gupta	9,201
73	Arun Kumar Khanna/ Susham Bala	9,008
74	Seema Uppal	25,825
75	Braham Singh, Madan Singh, Deshraj, Mam chand	11,432
76	Rohit Gupta	29,385
77	Raman Dua	9,837
78	Masood Kashif	10,128
79	Sumant Saran	15,377
80	Manmohan Krishan Taneja & Rajiv Makan	25,388
81	Magicon Impex Pvt. Ltd.	14,862
82	Alok Goyal	3,446
83	Abhishek Kumar	10,120
84	Poonam Tiwari	9,639
85	Dalip singh	93,826
86	OPL Infrastructure Pvt. Ltd.	77,266
87	Presstek C/o Sunil Manga	2,875
88	Rajander Singh Dahiya	33,755
89	Shammi Khosla	9,157
90	Kuldeep Singh	11,798
91	Kuldeep Singh	26,430
92	Anand Kumar Singhal	25,795
93	Anand Kumar Singhal	10,503
94	Ranjit Singh Jolly & Arvinder Kaur Jolly	3,850

95	Ranjit Singh Jolly & Arvinder Kaur Jolly	4,036
96	Harvinder singh Lamba & Tejinder Lamba	4,711
97	Harvinder singh Lamba & Tejinder Lamba	3,526
98	Tarun Agarwal	23,332
99	Sunder lal	23,360
100	Rajesh Khanna & Shashi Khanna	14,408
101	Virender Arora	26,740
102	Parveen Gandhi	12,054
103	Kamal Yadav	23,255
104	Nitin Khandelwal(HUF)	14,397
105	Vijaya Nand Jha	2,185
106	Arun Saroha	13,905
107	Kural Gaur	9,596
108	Vijay Chaurasia	9,602
109	Simran Sethi	8,506
110	Karishma Finishers Pvt. Ltd.	3,185
111	Anshu Mahajan	20,981
112	Harvinder singh Lamba	16,885
113	Vijay Shree Pande	12,853
114	Adarsh Kumar Yadav	11,406
115	Shobha Manga	7,658
116	Shobha Manga	7,732
117	Rajveer Singh	15,640
118	Mithlesh Raghav	22,835
119	Birender Singh	13,042
120	Kamal yadav	18,356

121	Jitender Kumar	7,626
122	Deepa Joshi & Yashika Joshi	14,518
123	Jyoti Sooknundun / Deepa Joshi	11,493
124	ABSS Securitas Pvt. Ltd.	23,992
125	Pankaj Gupta & Vimla Gupta	20,786
126	Pankaj Gupta & Vimla Gupta	48,801
127	Vijay Luxmi	12,054
128	Vijay Luxmi	12,932
129	Manoj Dahiya & Neelam Dahiya	12,774
130	Preeti Kakkar	76,078
131	Meena Kumari	15,134
132	Ishwer Singh	15,134
133	Kirti Gupta & shashank Goel	13,527
134	Mrs. Chitra Khosla through GPA holder Mr.. Ashwani Kumar Khillan	2,511
135	Parul Khanna Prakash & Param Prakash	13,480
136	Ramesh chand Juneja	10,559
137	Rajesh Kumar Jain (HUF)	8,361
138	Rajesh Kumar	12,054
139	Parkash Vanjani & Jaya Vanjani	7,819
140	Rajeev Kukreja / Amita Kukreja	13,395
141	Alok Verma	2,864
142	Gopal Sharma	8,114

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143	Sudershan Narang & R.K. Narang	9,505
144	Arun Grover	9,412
145	Dr. Manisha	9,505
146	Sunil Sapra & Amisha Sapra	3,129
147	Pankaj Sachdeva & Shalu Sachdeva	21,667
148	Manmohan Khanna & Anita Khanna	12,853
149	Prem Lata Dhir	39,184
150	Lokesh Sharma & Soni Sharma	8,831

44. We also order that the profiteering amount of Rs. 33,35,330/- along with the interest @ 18% from the date of receiving of the profiteered amount from the homebuyer till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date of receipt of this order.

45. It is also evident from the above narration of facts that the Respondent has denied benefit of ITC to the buyers of the flats and the shops being constructed by him in his Project JMD Imperial Suits/Suburbio-67 (Suburbio-1) in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of the above Act. Section 171 (3A) of the CGST Act, 2017 has been inserted in the CGST Act, 2017 vide Section 112 of the Finance Act, 2019, and the same became operational w.e.f. 01.01.2020. As the period of investigation was 01.07.2017 to 31.05.2020, therefore, the Respondent is liable for imposition of penalty under the provisions of the

above Section. Accordingly, notice be issued to him to explain why penalty as prescribed under Section 171 (3A) should not be imposed on him.

46. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC is passed on to each homebuyer as per this Order along with interest @18%. In this regard an advertisement of appropriate size (visible enough to public at imminent page) may also be published by the concerned Commissioner in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of builder (Respondent) – JMD Limited, Project- “JMD IMPERIAL SUITS” Location- Gurugram, Haryana and amount of profiteering Rs. 33,35,330/- so that the concerned homebuyers can claim the benefit of ITC if not passed on. Homebuyers may also be informed that the detailed NAA Order is available on Authority’s website www.naa.gov.in. Contact details of concerned Jurisdictional CGST/SGST Commissioner responsible for compliance of the NAA’s order may also be advertised through the said advertisement. Such an advertisement will help ensure that is complied with mandate of Section 171(2) of the CGST Act and will be a step to make certain that the benefit due to every eligible recipient is received by him from the Respondent.

47. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding compliance of this Order to this

Authority and the DGAP within a period of four months from the date of receipt of this Order.

48. Further, the DGAP is also directed to monitor the compliance of this order by the concerned jurisdictional CGST/SGST Commissioner.
49. A copy of this Order be sent free of cost to the Applicant No.1, the Respondent, Commissioners CGST/SGST Haryana, the Principal Secretary (Town and Country Planning), Government of Haryana as well as Secretary, Haryana RERA for necessary action.
50. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition CC No. 03/2020, while taking *suomoto* cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitations prescribed under general law of limitation or any other specified laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

"A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

"The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

51. A copy of this order be supplied to the Applicants and the Respondent. File of the case be consigned after completion.

S/d.

(Amand Shah)
Technical Member &
Chairman

S/d.

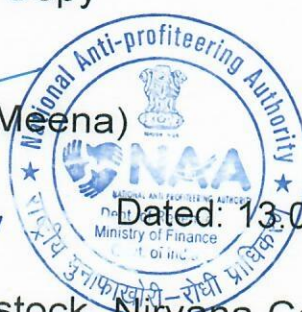
(Pramod Kumar Singh)
Technical Member

S/d.

(Hitesh Shah)
Technical Member

Certified Copy

(Dinesh Meena)



F.No.22011/NAA/JMD/58/2022/4937-44 Dated: 13.05.2022

Copy to:-

1. Shri Vishal Garg, 069, GF Woodstock, Nirvana Country, Sector – 50, Gurgaon – 122018
2. M/s. M/s JMD Limited, 3rd Floor, JMD Regent Square, Main M.G. Road, Gurugram, Haryana – 122002.
3. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Commissioner Of Commercial Taxes, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula- 134 151
5. Chief Commissioner of Central Goods & Services Tax Panchkula Sco 407408, Sector-8, Panchkula
6. Haryana Real Estate Regulatory Authority PWD Rest House, Civil Lines, Gurugram, Haryana- 122001,

7. Principal Secretary, Department of Town & Country Planning
Haryana, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018.
8. Guard File/ NAA Website.